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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 WILLIAM R.,)
08 Plaintiff,) CASE NO. C20-5261-MAT
09 v.)
10 ANDREW M. SAUL,) ORDER RE: SOCIAL SECURITY
Commissioner of Social Security,) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff proceeds through counsel in his appeal of a final decision of the
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied Plaintiff's application for Disability Insurance Benefits (DIB) and Supplemental
16 Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having
17 considered the ALJ's decision, the administrative record (AR), and all memoranda of record¹,
18 this matter is AFFIRMED.

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22 ¹ Plaintiff's opening brief does not comply with the scheduling order (Dkt. 16 at 2), in that it
does not list the disputed issues beginning on the first page. Dkt. 19 at 1-3. In the future, counsel
should take care to comply with the Court's orders to avoid a stricken brief.

01 **FACTS AND PROCEDURAL HISTORY**

02 Plaintiff was born on XXXX, 1985.² He has a high school diploma and his previous
03 jobs include warehouse worker, auction servicer, unloader/loader, forklift operator,
04 construction laborer, and fast-food manager. (AR 353, 372.)

05 Plaintiff applied for DIB and SSI in May 2017. (AR 263-76.) Those applications
06 were denied and Plaintiff timely requested a hearing. (AR 187-90, 195-210.)

07 In November 2018, ALJ Allen G. Erickson held a hearing, taking testimony from
08 Plaintiff and a vocational expert. (AR 32-116.) On January 11, 2019, the ALJ issued a
09 decision finding Plaintiff not disabled. (AR 13-24.) Plaintiff timely appealed. The Appeals
10 Council denied Plaintiff's request for review on January 31, 2020 (AR 1-6), making the ALJ's
11 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the
12 Commissioner to this Court.

13 **JURISDICTION**

14 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
15 405(g).

16 **DISCUSSION**

17 The Commissioner follows a five-step sequential evaluation process for determining
18 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
19 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
20 not engaged in substantial gainful activity since September 1, 2017, the amended alleged
21 onset date. (AR 15.) At step two, it must be determined whether a claimant suffers from a

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² Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 severe impairment. The ALJ found severe Plaintiff's lumbar spine degenerative disc disease.
02 (AR 15-17.) Step three asks whether a claimant's impairments meet or equal a listed
03 impairment. The ALJ found that Plaintiff's impairments did not meet or equal the criteria of a
04 listed impairment. (AR 17-18.)

05 If a claimant's impairments do not meet or equal a listing, the Commissioner must
06 assess residual functional capacity (RFC) and determine at step four whether the claimant has
07 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
08 performing light work, with additional limitations: he can occasionally climb ladders, ropes,
09 or scaffolds. He can occasionally crawl. He can have occasional exposure to vibration and
10 extreme cold temperatures. (AR 18.) With that assessment, the ALJ found Plaintiff capable
11 of performing his past relevant work as a fast-food manager. (AR 23-24.)

12 This Court's review of the ALJ's decision is limited to whether the decision is in
13 accordance with the law and the findings supported by substantial evidence in the record as a
14 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
15 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
16 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
17 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
18 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
19 F.3d 947, 954 (9th Cir. 2002).

20 Plaintiff argues the ALJ erred in (1) finding that his mental impairments were not
21 severe, (2) discounting his subjective symptom testimony, and (3) assessing certain medical
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evidence and opinions.³ The Commissioner argues that the ALJ's decision is supported by substantial evidence and should be affirmed.

Step two

At step two, a claimant must make a threshold showing that her medically determinable impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). "Basic work activities" refers to "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§ 404.1522(b), 416.922(b). "An impairment or combination of impairments can be found 'not severe' only if the evidence establishes a slight abnormality that has 'no more than a minimal effect on an individual's ability to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling 85-28). "[T]he step two inquiry is a de minimis screening device to dispose of groundless claims." *Id.* (citing *Bowen*, 482 U.S. at 153-54). An ALJ is also required to consider the "combined effect" of an individual's impairments in considering severity. *Id.* A diagnosis alone is not sufficient to establish a severe impairment. Instead, a claimant must show his medically determinable impairments are severe. 20 C.F.R. §§ 404.1521, 416.921.

In this case, the ALJ found that Plaintiff's major depressive disorder and posttraumatic stress disorder were medically determinable, but were not severe because they did not cause more than a minimal limitation in Plaintiff's ability to perform basic work activities. (AR 16-

³ The opening brief alleges that these enumerated errors led to errors in the RFC and deprived the ALJ's decision of the support of substantial evidence. Dkt. 19 at 13-15. These additional arguments need not be addressed separately, because they are enveloped in the arguments regarding the step-two findings and the ALJ's assessment of Plaintiff's testimony and the medical opinions.

01 17.) The ALJ also found that Plaintiff's lack of any mental health treatment or medications
02 further suggested that his mental conditions were not severe. (AR 17.)

03 Plaintiff argues that a September 2017 consultative psychiatric examination performed
04 by Nathaniel Sowa, M.D., demonstrates that his mental conditions caused significant
05 workplace limitations. Dkt. 19 at 7-9. The ALJ found Dr. Sowa's opinion to be
06 unpersuasive, however, because his conclusions were inconsistent with the mental status
07 examination he performed, and his conclusions were inconsistent with Plaintiff's
08 demonstrated functioning and instead appeared to be based on Plaintiff's non-credible self-
09 reporting. (AR 22.) As explained *infra*, the ALJ's assessment of Dr. Sowa's opinion is
10 reasonable and supported by substantial evidence. Thus, Plaintiff does not establish error in
11 the ALJ's step-two finding by pointing to evidence that the ALJ properly found unpersuasive,
12 and Plaintiff does not dispute the ALJ's finding that his lack of mental health treatment also
13 suggested that his mental conditions were not severe. Plaintiff has failed to meet his burden
14 of proof to show harmful legal error in the ALJ's step-two findings.

15 Subjective symptom testimony

16 The ALJ discounted Plaintiff's allegations for a number of reasons: (1) Plaintiff's
17 allegations were inconsistent with the medical evidence, which included many normal or mild
18 findings; (2) Plaintiff's symptoms improved with treatment, and Plaintiff did not report to his
19 providers the medication side effects that he alleged to the ALJ; (3) Plaintiff's activities were
20 inconsistent with the degree of back pain he reported; and (4) Plaintiff worked and certified
21 that he was able to work (for purposes of collecting unemployment benefits) since his
22 workplace injury. (AR 18-21.) Plaintiff argues that these reasons are not clear and

01 convincing, as required in the Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th
02 Cir. 2014).

03 Scope of the record

04 First, Plaintiff argues that the ALJ erred in determining the relevant period in light of
05 his amendment of his alleged onset date. In Plaintiff's applications, he alleged disability as of
06 April 24, 2016, the date he was injured on the job. At the administrative hearing, after a
07 discussion of the evidence pertaining to his post-injury work as well as his collection of
08 unemployment benefits, Plaintiff amended his alleged onset date to September 1, 2017. (AR
09 59-69.)

10 In the decision, the ALJ refers to Plaintiff's work activity and collection of
11 unemployment benefits, although those predate the amended alleged onset date. (AR 21.)
12 Plaintiff argues that this was improper, particularly in light of the ALJ's finding that medical
13 opinions predating the amended alleged onset date were irrelevant. (*See* AR 23.) Plaintiff has
14 failed to demonstrate harmful error in the ALJ's findings. Even if, as Plaintiff argues, the
15 ALJ erred in discounting his testimony in light of activities performed before the alleged
16 onset date, any error would be harmless in light of the ALJ's other independent reasons for
17 discounting Plaintiff's allegations. *See Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d
18 1155, 1162-63 (9th Cir. 2008).

19 Furthermore, the Ninth Circuit has previously explained that medical opinions
20 predating the alleged onset of disability are of "limited relevance." *See Carmickle*, 533 F.3d
21 at 1165. Thus, the ALJ did not err in limiting his discussion to the medical opinions that
22 pertain to the relevant period. (AR 23.)

01 Accordingly, the Court finds that Plaintiff has failed to show harmful legal error in the
02 ALJ's determination of the relevant period.

03 Activities

04 Plaintiff argues that the ALJ erred in assessing Plaintiff's activities, because the ALJ
05 stated that Plaintiff cared for his children and completed household chores, yet Plaintiff
06 testified that he received help with those activities from his significant other and his children.
07 Dkt. 19 at 5. But the record also contains evidence that Plaintiff independently managed these
08 activities to some degree. (*See* AR 394, 999-1000, 1006, 1013.) The ALJ cited evidence
09 showing that Plaintiff completed some activities on his own, and the ALJ reasonably found
10 that this evidence contradicted his testimony and discounted Plaintiff's testimony on that
11 basis. Although Plaintiff urges the Court to credit his testimony, he has not shown that the
12 ALJ erred in finding otherwise, as one of multiple reasons to discount Plaintiff's testimony.

13 Plaintiff also argues that his alleged limitations in driving and walking were consistent
14 with some of the medical evidence (Dkt. 19 at 5 (citing AR 1008, 1013)), but does not show
15 that the ALJ erroneously relied on the many normal physical findings in the record, such as
16 Plaintiff's normal musculoskeletal and neurologic exams, normal gait and station, normal
17 range of motion, and normal strength. (*See* AR 19-20.)

18 Plaintiff contends generally that "it is very unclear how the [ALJ] determines that [his]
19 testimony is inconsistent with the record" (Dkt. 19 at 6), but the Court finds that the ALJ's
20 discussion of the evidence is adequately clear: the ALJ summarized medical evidence and
21 explained that he found that although there were some abnormal findings, the many normal
22 findings indicate that Plaintiff's limitations are less severe than alleged and would be

01 consistent with performing light work with additional limitations. (AR 19-20.) The ALJ also
 02 noted that one provider believed Plaintiff's reported pain was out of proportion to the
 03 objective findings. (AR 20.) The ALJ went on to find that Plaintiff's symptoms improved
 04 with treatment, and that he did not report to his providers the medication side effects he
 05 described at the hearing. (AR 21.) The ALJ also cited Plaintiff's activities, and reasonably
 06 found them to be inconsistent with his allegations. (AR 21.) Thus, the Court disagrees that
 07 the ALJ's decision fails to explain why he found the record to be inconsistent with Plaintiff's
 08 allegations. Although Plaintiff questions whether the ALJ's assessment of his testimony was
 09 "well-founded by the medical evidence" (Dkt. 19 at 6), Plaintiff has not shown that the ALJ
 10 overlooked any significant, probative evidence and has not shown that the ALJ's decision
 11 lacks the support of substantial evidence. Accordingly, because Plaintiff has not shown that
 12 the ALJ harmfully erred in contrasting the evidence with his testimony, the Court affirms the
 13 ALJ's assessment of Plaintiff's subjective testimony.

14 Medical evidence

15 Legal standards

16 Because Plaintiff applied for benefits after March 27, 2017, new regulations apply to
 17 the ALJ's evaluation of medical opinion evidence. Under the regulations, an ALJ "will not
 18 defer or give any specific evidentiary weight, including controlling weight, to any medical
 19 opinion(s) or prior administrative medical finding(s)[.]" 20 C.F.R. §§ 404.1520c(a),
 20 416.920c(a).⁴ The ALJ must articulate and explain the persuasiveness of an opinion or prior

22 ⁴ "A prior administrative medical finding is a finding, other than the ultimate determination about [disability], about a medical issue made by our Federal and State agency medical and

finding based on “supportability” and “consistency,” the two most important factors in the evaluation. *Id.* at (a), (b)(1)-(2). The “more relevant the objective medical evidence and supporting explanations presented” and the “more consistent” with evidence from other sources, the more persuasive a medical opinion or prior finding. *Id.* at (c)(1)-(2). The ALJ may but is not required to explain how other factors were considered, as appropriate, including relationship with the claimant (length, purpose, and extent of treatment relationship; frequency of examination); whether there is an examining relationship; specialization; and other factors, such as familiarity with other evidence in the claim file or understanding of the Social Security disability program’s policies and evidentiary requirements. *Id.* at (b)(2), (c)(3)-(5). *But see id.* at (b)(3) (where finding two or more opinions/findings about same issue equally supported and consistent with the record, but not exactly the same, ALJ will articulate how other factors were considered). Where a single medical source provides multiple opinions or findings, the ALJ conducts a single analysis and need not articulate how each opinion or finding is considered individually. *Id.* at (b)(1).

Medical opinion evidence

Dr. Sowa examined Plaintiff in September 2017 and wrote a narrative report describing his symptoms and limitations. (AR 1011-15.) Dr. Sowa indicated that Plaintiff’s cognitive and social abilities were fair to good, but that his ability to work at a sufficient pace was poor in light of his problems with activities of daily living due to a combination of physical and psychological factors, and his ability to maintain attendance and complete his

psychological consultants at a prior level of review . . . in [a] claim based on their review of the evidence in your case record[.]” 20 C.F.R. §§ 404.1513(a)(5), 416.913(a)(5).

01 work were poor based on his “reported ongoing pain.” (AR 1015.)

02 As mentioned *supra*, the ALJ found Dr. Sowa’s opinion unpersuasive because his
03 conclusions were inconsistent with the mental status examination he performed, and his
04 conclusions were inconsistent with Plaintiff’s demonstrated functioning and instead appeared
05 to be based on Plaintiff’s non-credible self-reporting. (AR 22.) This rationale is reasonable
06 and supported by substantial evidence. Dr. Sowa explicitly cited Plaintiff’s self-reported
07 problems with activities of daily living and physical pain to explain his ratings of Plaintiff’s
08 abilities as to pace and absenteeism, and the ALJ properly discounted Plaintiff’s self-report, as
09 explained *supra*. Thus, the ALJ did not err in finding that Dr. Sowa’s opinion was
10 unpersuasive to the extent it relied on Plaintiff’s self-report.

11 Furthermore, the ALJ reasonably found Dr. Sowa’s opinion to be inconsistent with the
12 mental functioning required in the daily activities Plaintiff described, namely taking primary
13 care of his four children as a single parent. (AR 22.) Indeed, Plaintiff described
14 independently managing his household to Dr. Sowa: managing his own hygiene, managing
15 his finances, helping his children get ready for school every day, preparing easy meals
16 (obtaining help from his children for elaborate meals), studying the Bible with his children
17 and discussing their issues. (AR 1013.) Plaintiff’s ability to care for his four children as the
18 primary solo caretaker, even with the children’s help on some physical chores, is reasonably
19 inconsistent with the mental limitations described by Dr. Sowa, and the ALJ did not err in
20 relying on this inconsistency in finding Dr. Sowa’s opinion unpersuasive.

21 Lastly, the ALJ noted that Dr. Sowa’s normal mental status examination was
22 inconsistent with the limitations suggested by Dr. Sowa. (AR 22.) Dr. Sowa’s normal mental

01 status examination findings are indeed reasonably inconsistent with the focus and
02 concentration deficits that Dr. Sowa indicated. (*Compare* AR 1014 with AR 1015.) Although
03 Plaintiff suggests that the ALJ erred in relying on mental status findings in treatment notes as
04 inconsistent with Dr. Sowa's conclusions (Dkt. 19 at 10-11), the ALJ explicitly contrasted Dr.
05 Sowa's conclusions with his own mental status examination, not the examinations of treating
06 providers who saw Plaintiff for reasons other than psychiatric appointments. (AR 22 ("[Dr.
07 Sowa's] opinion is not persuasive because it is inconsistent with the doctor's fairly
08 unremarkable mental status exam of the claimant.")) Thus, Plaintiff has not shown that the
09 ALJ erred in relying on an internal inconsistency in finding Dr. Sowa's opinion to be
10 unpersuasive.

11 Plaintiff also argues that the ALJ erred in assessing the evidence of his physical
12 limitations. Plaintiff posits an alternative interpretation of various physical findings (Dkt. 19
13 at 11), but does not explain how these findings demonstrate harmful error in the ALJ's
14 decision. For example, Plaintiff argues that the opinion of examining physician Gary
15 Gaffield, D.O., that Plaintiff "only suffers from back pain is categorically incorrect" in light
16 of contrary evidence (Dkt. 19 at 11), but it is unclear what part of Dr. Gaffield's opinion
17 Plaintiff intended to highlight here. Plaintiff goes on to argue that the ALJ erred in failing to
18 account for Dr. Gaffield's opinion that Plaintiff should avoid postural activities and certain
19 environmental conditions (Dkt. 19 at 11-12), but fails to acknowledge that the ALJ explained
20 why he found Dr. Gaffield's opinion as to postural limitations to be inconsistent with his
21 findings and other treatment notes in the record. (AR 22.) Plaintiff has failed to show or even
22 argue that this line of the ALJ's reasoning was erroneous. Furthermore, Plaintiff has not

01 shown that the job identified at step four (fast-food manager) requires exposure to any of the
02 environmental conditions (stairs, scaffolds, heights, heavy machinery) that Dr. Gaffield
03 suggested that Plaintiff must avoid. *See* Dictionary of Occupational Titles 187.167-106, 1991
04 WL 671389 (Jan. 1, 2016) (definition of fast-food manager job).

05 Plaintiff goes on to argue that the ALJ should have afforded more weight to an
06 occupational therapist's opinion (Dkt. 19 at 12), but fails to appreciate that the new medical
07 regulations specifically instruct ALJs not to give any particular evidentiary weight to medical
08 opinions, but instead instructs them to assess the consistency and supportability of medical
09 opinions, which the ALJ did here. (AR 22.) To the extent that Plaintiff contends that the ALJ
10 erred in finding that the occupational therapist's opinion was inconsistent with findings of the
11 treating providers (Dkt. 19 at 12), he fails to show that the ALJ erred in finding that the
12 evidence of Plaintiff's normal functioning (*e.g.*, normal gait, full strength, intact sensation,
13 normal reflexes) in the treatment notes contradicted the occupational therapist's conclusion
14 that Plaintiff was restricted to sedentary work. Although Plaintiff urges the Court to focus on
15 findings such as positive straight leg raise testing in the treatment record (Dkt. 19 at 12), the
16 ALJ acknowledged that the record contained some abnormal findings (AR 19-20) and did not
17 err in focusing on the findings pertaining to Plaintiff's normal functioning. Moreover,
18 although Plaintiff suggests (Dkt. 19 at 11) that the ALJ misquoted the record in finding "very
19 little compression of the right exiting L5 nerve root," the ALJ's decision quotes verbatim
20 from a treating neurosurgeon's note in so finding. (*See* AR 1300.)

21 Plaintiff argues in conclusion that the limitations addressed in Dr. Sowa's opinion, in
22 combination with the additional physical limitations not included in the ALJ's RFC

01 assessment “create reversible error” because the omitted limitations “offer, at minimum,
02 support to overturn the [ALJ’s] conclusion that [Plaintiff] can perform his past relevant
03 work[.]” Dkt. 19 at 12. This argument is not grounded in an identification of a legal error in
04 the ALJ’s decision: the existence of evidence that could support a finding of disability does
05 not show that the ALJ erred in finding the contrary. *See Jamerson v. Chater*, 112 F.3d 1064,
06 1067 (9th Cir. 1997) (“[T]he key question is not whether there is substantial evidence that
07 could support a finding of disability, but whether there is substantial evidence to support the
08 Commissioner’s actual finding that claimant is not disabled.”). The ALJ explained why he
09 found certain opinions persuasive and others not persuasive, and although Plaintiff disagrees
10 with the ALJ’s assessment, he has failed to show that the ALJ’s interpretation was erroneous
11 and thus fails to show that the ALJ erred in failing to account for limitations identified in
12 unpersuasive opinions.

13 Plaintiff goes on to argue that “the step five analysis develops a record to suggest” that
14 Plaintiff would have additional limitations not included in the RFC assessment (Dkt. 19 at 12-
15 13), but the ALJ did not proceed to step five in this case and thus this argument does not
16 appear to advance Plaintiff’s contention that the ALJ’s decision contains error or is not
17 supported by substantial evidence.

18 For all of these reasons, the Court finds that Plaintiff has failed to show harmful legal
19 error in the ALJ’s assessment of the medical evidence. Although Plaintiff urges the Court to
20 interpret and/or re-weigh the evidence in his favor, the Court’s limited role in reviewing an
21 ALJ’s decision does not extend so far. *See Ahearn v. Saul*, __ F.3d __, 2012 WL 609825 at
22 *2 (9th Cir. Feb. 17, 2021) (“[Courts] may not reweigh the evidence or substitute our

01 judgment for that of the ALJ.”). Thus, the Court concludes that Plaintiff has failed to meet his
02 burden to show harmful legal error in the ALJ’s assessment of the medical evidence.

03 **CONCLUSION**

04 For the reasons set forth above, this matter is AFFIRMED.

05 DATED this 25th day of February, 2021.

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07 Mary Alice Theiler
08 United States Magistrate Judge
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